Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	
CTIA Petition For Expedited Consideration	)	
	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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Date: June 8, 1998

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SBC Communications Inc. ("SBC"), on behalf of its wireline and wireless subsidiaries,[1] submits these Reply Comments in response to comments filed on the Petition for Expedited Consideration of the Cellular Telecommunications Industry Association ("CTIA"), which urged the FCC to begin a Notice of Proposed Rulemaking ("NPRM") on certain aspects of Calling Party Pays ("CPP") in conjunction with Commercial Mobile Radio Service ("CMRS").[2] The comments confirm that there is no need for a NPRM and that regulation in this complex area would reduce the flexibility of

[1] SBC's wireline subsidiaries are Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell. SBC's wireless subsidiaries are Southwestern Bell Mobile Systems Inc., Southwestern Bell Wireless Inc., and Pacific Bell Mobile Services.

[2] SBC filed Comments on CTIA's Petition on March 5, 1998, prior to the FCC's March 9, 1998 Public Notice of CTIA's Petition in this proceeding. SBC also filed December 16, 1997 Comments and January 16, 1998 Reply Comments on the *Notice of Inquiry* in this proceeding. All references herein to parties are to their comments on CTIA's Petition unless otherwise noted.

wireless and landline carriers to experiment with CPP or other new billing or service options and to differentiate themselves in creative ways through private negotiations and marketplace competition. Accordingly, the Commission should take expedited action to dismiss or otherwise conclude this proceeding because no action is needed.

Concluding this proceeding without creating new regulations would be consistent with the intent of the Telecommunications Act of 1996 "to provide for a pro-competitive, de-regulatory national policy framework...."[3] This intent is manifested in Sections 10 and 11 of the 1996 Act which are aimed at forbearance from, and repeal of, unnecessary regulations.[4] Where, as in this docket, the overwhelming evidence is that no action is necessary or appropriate, it would be inconsistent with the intent of Congress for the FCC to nonetheless create new regulations.

I. SUMMARY -- THERE IS NO NEED FOR FCC REGULATION OF CPP, AND SUCH REGULATION COULD HINDER MARKETPLACE DEVELOPMENT OF INNOVATIVE SERVICE OPTIONS

The comments show that a NPRM on CPP would be a solution in search of a problem. It is not that CPP is free of problems. The record on the *Notice of Inquiry* ("NOI") on CPP produced substantial evidence of two significant problems: (1) technological "leakage" of traffic that cannot be billed; and (2) pricing disparities between wireless and landline service that make the leap for end users from flat-rate local service to measured CPP service difficult at best.[5] But no party is foolish enough

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("the 1996 Act"); *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[4] 47 USC §§ 160 &161.

[5] *See* SBC's December 16, 1997 Comments on the NOI in this proceeding at 10-13.

to recommend that the FCC attempt to solve these two problems. There is widespread agreement that the marketplace must determine whether or not CPP is economic and destined for success in spite of these hurdles.[6] Those parties that support a NPRM want it to "fix that which ain't broke" and protect certain market participants from an unknown future.

Those that want regulatory protection are trying to simplify CPP via government fiat. They want to freeze it nationwide, even though, as AT&T explains, "neither the industry nor the Commission knows what form CPP will eventually take."[7] AT&T is the only party that introduced new evidence in its comments of an actual CPP market trial, and AT&T opposes FCC action. AT&T concludes, "Commission action premised on a particular model of CPP – such as a billing arrangement between CMRS providers and local exchange carriers ("LECs") – could inadvertently preclude other innovative ways to provide CPP."[8]

The development of CPP and other options is unquestionably complex. There is nothing simple about CPP; parties have shown they can argue almost endlessly about numerous issues. Yet, CPP is only one of countless ways that CMRS and other service providers may seek to differentiate themselves. It is the complexity of these developments that makes the trial and error process of the marketplace the proper crucible for solutions -- allowing individualized negotiations where service providers

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[6] *See, e.g.*: AirTouch at 2; AT&T at 1; Bell South at 4; CTIA at 4; Motorola at 3; OPATSTCO at 2; Petroleum Communications, Inc.; Rural Cellular Association at 1; Rural Telecommunications Group at 3-4; and USTA at 6.
[7] AT&T at 2.
[8] *Id.*

work out problems, and individualized purchasing decisions by consumers who determine the ultimate success or failure of each billing or service option.

II. THERE IS NO NEED, OR LEGAL AUTHORITY, FOR A NPRM CONCERNING THE MATTERS NAMED BY SOME CMRS PROVIDERS FOR INCLUSION IN A NPRM

There is no need, or legal authority, for a NPRM on the matters named by some CMRS providers for inclusion in a NPRM: notification; enforceable obligations; and LEC billing and collection.

A. Notification

CTIA and some other parties want the FCC to address consumer notification in order to have a nationwide requirement.[9] They do not name even one example of a problem of inconsistent notifications for CPP in different parts of the Country. Nonetheless, they argue that there may be conflict and that it would be more convenient to eliminate the States. Preemption cannot be based merely on conflict between different States, real or imagined, or on inconvenience in dealing with multiple authorities. As the DC Circuit found concerning *Louisiana Public Service Commission v. FCC*, "the only limit that the Supreme Court has recognized on a state's authority over intrastate telephone service occurs when the state's exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communication."[10] The record does not demonstrate any such frustration of FCC

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[9] *See, e.g.:* CTIA at 3-4; Bell Atlantic at 3-4; Omnipoint at 7-9; Rural Telecommunications Group at 4; Vanguard at 17-18.

[10] *National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422, 429 (D.C. Cir. 1989).

authority. In addition, Congress has reserved regulation of CMRS "consumer protection matters" to the States.[11]

SBC strongly supports adequate notification to end users in order to ensure that end user customers will not be confused as to whether there is a charge applicable to the call. The important thing is not precisely how notification is given but that the calling party is notified of the existence of a charge for the call and of the approximate size of the charge, and then given a choice as to whether or not to place the call. Carriers have the incentive to ensure proper notification. This notification not only protects the end user customer but also creates the enforceable obligations.

B. Enforceable Obligations

Some parties that seek a NPRM want the FCC to address the relationship between the landline end user and the CMRS provider so that the CMRS provider can charge the landline end user.[12] Again, they have not shown a real world problem requiring regulatory assistance. So long as the end user is provided adequate notice of the requirement to pay and then a choice of whether to place the call, the FCC already has found that there is an implied-in-fact contractual obligation to pay for calls placed.[13]

[11] H.R. Rep. No. 103-111, at 261 (1993). CTIA and Vanguard admit, as they must, that a consumer notification policy would require "consumer protection" rules or measures. CTIA at 2, 17-18.

[12] *See, e.g.*, CTIA at n. 5.

[13] *See* SBC's Comments on the NOI in this proceeding at 21.

C. LEC Billing And Collection

One wing of the CMRS industry, consisting of AirTouch, Omnipoint, and Vanguard, wants the FCC to turn the clock back to 1986 and re-regulate billing and collection and force the LECs to provide these services for them.[14] The only concrete reason they provide for their reactionary cry is that some customers' bills may be too low to justify billing costs – the billed amount for CPP may be "less than the cost of postage to mail the bill."[15] AirTouch, Omnipoint, and Vanguard would force the LECs to use their relationships with landline customers to scrape pennies from these customers' pockets, so that AirTouch, Omnipoint, and Vanguard could avoid taking chances in the marketplace. In the marketplace, if a service continues to be not worth billing for, it is not worth offering.

III. THERE IS NO NEED, OR LEGAL AUTHORITY, FOR THE FCC TO REQUIRE LEC BILLING AND COLLECTION FOR CPP

Vanguard blames the LECs for its failure to move forward with CPP because only some, not all, LECs have agreed to bill and collect for CPP.[16] Omnipoint, too, complains that it has not obtained all the billing agreements it wants.[17] Since the filing of its comments on the NOI in this proceeding, however, Omnipoint has negotiated billing arrangements with at least two BOCs.[18]

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[14] AirTouch at 2; Omnipoint at 3; Vanguard at 9. Omnipoint takes the particularly regressive view that the Commission should regulate the rates for LEC billing and collection services. Omnipoint at 6.
[15] AirTouch at 3.
[16] Vanguard at 12.
[17] Omnipoint at 3-5.
[18] *Id.* at 4.

At the same time, AT&T is moving forward with CPP, realizing that it can be offered in various ways that do not require any set relationship with, or assistance from, LECs. CTIA itself again acknowledges: "[T]here is no need for the FCC to alter the existing CMRS/LEC relationship. For CPP to be viable, LECs need only make available relevant data to bill for CPP; CMRS providers should maintain the right to voluntarily negotiate with LECs for billing and collection services."[19] Bell Atlantic agrees that all that is needed for CMRS providers' billing of CPP is billing name and address data.[20]

LECs already provide this billing information as an unbundled network element in negotiations under Sections 251 and 252 of the 1996 Telecommunications Act.[21] Section 153(3) of the Act defines "network element" to include "information sufficient for billing and collection." Provision of such information, by definition, makes LEC billing and collection services, themselves, unnecessary for other carriers. Accordingly, and contrary to Vanguard's statement,[22] LEC "billing and collection" cannot be a network element, and incumbent LECs cannot be required to provide it under Section 251.

In addition, Congress reserved authority over CMRS billing practices to the States. Section 332(c)(3)(A) reserves to the States the regulation of all "other terms and conditions" of CMRS except entry and rates charged by CMRS providers. The House Report on Section 332 lists "customer billing information and practices and billing disputes" as matters that fall within the "other terms and conditions" of CMRS that

[19] CTIA at 4.
[20] Bell Atlantic at 4.
[21] 47 USC Sections 251-2.
[22] Vanguard at 13-14.

remain under state authority.[23] Incomprehensibly, Vanguard quotes this same language, points out these matters are under State authority, and then concludes that the House Report "demonstrates that the Commission and not the states, has the authority to adopt a uniform set of billing and collection rules for CPP."[24] These rules would govern "billing practices," and such authority cannot be taken from the States.

As noted by AirTouch and Vanguard,[25] SBC LECs are among those LECs that have not agreed to provide billing and collection for CPP. This choice is reasonable, as we have explained in detail in this proceeding.[26] AirTouch mentions again its unfounded allegations that Pacific Bell's state tariffs require it to provide CPP billing and collection and that Pacific Bell's decision not to do so is anticompetitive. We have shown that the tariff allegation is wrong and that the anticompetitive allegation is not only wrong but outrageous.[27]

We have explained that one of Pacific Bell's concerns regarding billing and collection for CPP is that placing these charges on its local telephone bills is likely to confuse Pacific Bell's customers.[28] The Washington Utilities & Transportation Commission ("WUTC") expresses a similar concern: "If the FCC needs any reminder of the difficulties consumers have with unknown charges creeping into their local telephone bills, it merely needs to look to the volumes of slamming and cramming

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[23] H.R. Rep. No. 103-111, at 261 (1993).
[24] Vanguard at 17.
[25] AirTouch at 3; Vanguard at 12.
[26] *See* SBC's December 16, 1997 Comments on the NOI at 16-17 and January 16, 1998 Reply Comments at 15-19.
[27] *See* SBC's January 16, 1998 Reply Comments on the NOI at 15-19.
[28] *See id.* at 18.

complaints that have shown exponential growth in recent months."[29] The FCC should reject the pleas of those few CMRS providers who want additional CPP charges forced onto LEC bills. Alternatives exist, and the issue of who does the billing and collection should be left to negotiation and marketplace competition.

IV. THOSE THAT SAY CPP IS THE NECESSARY AND SOLE ANSWER TO ACHIEVING FULL COMPETITION BETWEEN WIRELESS AND LANDLINE SERVICES ARE MISTAKEN

Some CMRS providers urge the FCC to create nationwide standards to govern CPP offerings, by those who choose to offer it, under the premise that CPP will bring substantial competition between wireless and landline services.[30] CTIA states that "[s]o long as wireless subscribers are compelled to pay for incoming calls, wireless services will not be an adequate substitute for wireline service."[31] Other than attempting to use analogies to the situations in other countries,[32] parties, once again, have not provided evidence to support that premise.

A. The International Experience

SBC and others have shown that the international experience with CPP is not indicative of demand for CPP in the United States.[33] Differing customer expectations and telecommunications systems affect demand for CPP and its viability. In most

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[29] WUTC at 2.
[30] *See, e.g.*: CTIA at 4; Motorola at 1-2; NEXTEL at 3; Omnipoint at 2-3; Vanguard at 1-5.
[31] CTIA at 4.
[32] Vanguard at 5-7.
[33] See SBC's December 16, 1997 Comments on the NOI in this proceeding at 13-16.

foreign countries customers are generally accustomed to paying measured usage rates for local service, whereas most customers in the United States are accustomed to low, flat-rate local service. Thus, CPP faces less customer reluctance in these other countries. Also, many foreign countries have landline service of inferior quality, and wireless service is a more necessary substitute.

Moreover, broad use of CPP in a country does not mean that CPP is necessarily in the public interest there. For instance, the Office Of Telecommunications ("OFTEL"), the United Kingdom's telecommunications regulator, in 1996, "opened an investigation into the prices of calls ***to*** mobile phones following complaints from business and residential customers that the prices were excessive."[34] In March 1998, OFTEL concluded that these prices are indeed excessive.[35] The situation in the United Kingdom, of course, is different than in the United States. In the United Kingdom, "the market for mobile services is not open to additional competition...."[36] In addition, in the United Kingdom, CPP exists without the consumer protections, including notification to calling parties, that are accepted as necessary, and are being applied, with CPP in the United States. In the United Kingdom, "[i]n many cases the calling customer is not aware either that he is calling a mobile or how much the call costs."[37] Such differences between countries not only make comparisons meaningless but also demonstrate that

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[34] OFTEL's submission to the Monopolies and Mergers Commission inquiry into the prices of calls to mobile phones, May 1998, (http://www.oftel.gov.uk/pricing/mmc0598.htm) at pages 1 of 32 and 2 of 32.
[35] *Id.* at page 2 of 32.
[36] *Id.* at page 3 of 32.
[37] *Id.*

widespread use of CPP in a country does not necessarily mean that the end users being charged chose, or even like, CPP or that it is in the public interest.

B. The Effect Of Prices On Wireless And Landline Substitutability

In the United States, wireless is inhibited from becoming a substitute for landline service not so much based on who pays for CMRS airtime, the called or calling party, but based on the higher price of CMRS airtime.[38] To be substitutable, the charges for wireless and landline service need to be closer together. Wireless subscribers might be willing to pay a small premium for the benefit of mobility derived from giving out their wireless numbers and leaving their wireless phones on for receiving calls while they are mobile. Landline subscribers might also be willing to pay a small premium for the benefit of calling someone else who is mobile, rather than having to wait until that person arrives at a set destination. But prices have not dropped to that "small premium" as yet. Thus, with or without CPP, wireless is not ready to be a substitute for wireline at this time.

Use of CPP may discourage lower CMRS prices. Such use could create a diseconomy because with CPP the party who pays for call termination is not the party who selects the supplier of call termination. Since the calling party does not select the supplier, the calling party cannot ensure that it is a low-priced supplier. With CPP, the wireless subscriber may not have as much incentive to select a low-priced supplier of call termination, since the wireless subscriber does not pay for call termination.

[38] The FCC has stated that "the primary obstacle to classifying wireless as a potential substitute for wireline telephony is the per minute charge." *Annual report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 97-75, *Second Report*, Released March 25, 1997.

C. Other Service Options

Carriers also are developing and offering options other than CPP to stimulate the receipt of calls by CMRS subscribers. For instance, Pacific Bell Mobile Services offers first minute free on incoming calls, caller ID so that calls can be screened, and voice mail with limited message recording times. As a result, traffic has become significantly more balanced. In addition, we understand that AT&T and others are offering CMRS subscribers flat-rate pricing on large quantities of minutes of use, which can be used for both outgoing and incoming calls. The marketplace is working and is likely to continue this trend, so long as the industry and regulators do not get stuck on fixed approaches in search of the panacea that does not exist.

D. Demand For CPP

Some CMRS providers comment on the demand for CPP.[39] The discussion of demand, however, is from the CMRS providers' perspective and may reflect CMRS subscribers' demand as well. We do not know of any studies, however, that attempt to quantify the demand from the perspective of the customers who will be charged (for instance, landline customers who are charged for calling wireless customers). Although no information has been brought forth to show a need by these customers for the service, it will be the acceptance of this market segment that will determine whether or not CPP will be a success.

In 1996, SBC interviewed six focus groups, with 10 to 12 wireless and/or landline customers or prospective customers in each group. These interviews were intended to

[39] See, e.g., Sprint Spectrum at 1, 3-4; Rural Telecommunications Group at ii; Vanguard at i.

provide some general idea of the possible acceptance of CPP and some examples of the reasoning and motivations of subscribers, not to produce a statistically valid study. SBC found that most CMRS subscribers indicated that they would not increase their acceptance of inbound calls, while a minority of CMRS subscribers indicated that they would only moderately increase their acceptance of inbound calls. They gave various reasons for this, including not wanting their family and friends to pay for the calls. On the other hand, the reaction from most of the landline subscribers was that they likely would significantly reduce their calls to CMRS subscribers in order to avoid the charges. Many of them wanted the option to block CPP calls from their phones.[40]

Two years have passed since our focus group discussions, and in this industry that is a long time. The complexities of the demand for CPP and other options will continue to be examined and tested in the marketplace, so long as the industry and regulators are not fooled into locking themselves into the wrong, or too few, options by considering the wrong demand -- demand by those trying to avoid charges rather than by those who would be paying them.

[40] WUTC, at 3, also supports a call blocking option for landline subscribers. CPP is a billing option offered by CMRS providers. As such, CMRS providers should pay the costs incurred by LECs to offer blocking to end users.

V. CPP IS NOT LIMITED TO LANDLINE SUBSCRIBER TO WIRELESS SUBSCRIBER CALLS[41]

AT&T indicates that its CPP trial applies not only to landline subscriber to wireless subscriber calls, but also to calls from one wireless subscriber to another wireless subscriber, and that the same features apply. AT&T states, "When a wireless subscriber places a call to another wireless subscriber that has chosen the CPP option, a similar process is followed to ensure that the caller receives the CPP announcement and the call is billed properly."[42] SBC agrees that, where CPP is implemented, the CPP option would apply between wireless customers, too.

In addition, where the wireless subscriber has the option to choose CPP, there may be situations where the landline subscriber could as well. This situation might arise , for instance, if CPP is used in conjunction with Wireless Local Loop ("WLL"). It

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[41] Paging companies have been silent in this comment cycle. Paging services do not substitute for and compete with landline services. Under CPP, paging companies and their end users could escape financial obligations, because calls are not originated on paging systems and, thus, paging subscribers are never calling parties on paging systems. If the landline calling party paid the full costs for the paging service, paging subscribers would pay nothing for their service, or the paging company would double collect. Thus, the FCC should do nothing to encourage CPP for paging. If, contrary to SBC's recommendation, the FCC were to regulate CPP for CMRS in order to encourage expansion of use of CPP, the FCC should differentiate paging services and leave them out of such a regulatory scheme. This approach would be consistent with Congress' expectation that the FCC might regulate some classes of CMRS differently than others. "Congress granted the Commission the flexibility to identify different classes of CMRS for purposes of determining whether to forbear from Title II regulation." *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411 (1994) at para. 162, citing Conference Report at 491. Of course, if CPP were ever used by paging companies, consumer protections including adequate announcements of charges would be essential. Any arrangements should be left to negotiations between the carriers.

[42] AT&T at n. 7.

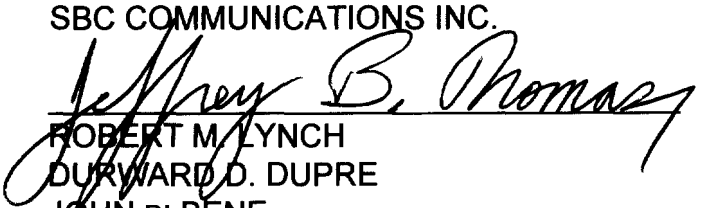
could be inequitable for landline callers to pay for calls to WLL subscribers, but not vice versa. Thus, the WLL subscriber might receive an announcement that the call to the landline subscriber will be charged for if the WLL subscriber chooses to place the call. Such arrangements would directly implicate existing state regulations.[43]

VI. CONCLUSION

The FCC should give the proper signal to the industry concerning CPP -- that there will be no simple, all or nothing, solutions to try to solve problems before they exist in order to protect certain market participants. The FCC should signal now, through an expedited conclusion of this proceeding, that carriers should move forward on their own -- to negotiate, compete, and experiment in the marketplace concerning CPP or other billing or service options.

Respectfully submitted,

SBC COMMUNICATIONS INC.



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[43] Similarly, where there is CPP, calls between landline subscribers potentially could have the same options as in these other subscriber combinations. That is, there could be an option under which the calling landline subscriber would pay measured rates for a call to another landline subscriber, if the calling subscriber chose to place the call after receiving the announcement that it would have to pay. This arrangement also would directly implicate existing state regulations.